

# Arnel Development Co. v. City of Costa Mesa , 28 Cal.3d 511

## OPINION

TOBRINER, J.

Plaintiff Arnel proposed to construct a 50-acre development consisting of 127 single-family residences and 539 apartment [28 Cal.3d 514] units. [fn. 1](#) Objecting to this proposal, a neighborhood association circulated an initiative rezoning the Arnel property and two adjoining properties (68 acres in all) to single family residential use. When the voters approved the initiative, Arnel instituted the instant action. [fn. 2](#) The superior court upheld the initiative: the Court of Appeal reversed. We transferred the cause here on our own motion [fn. 3](#) to examine further the holding of the Court of Appeal that the rezoning of specific, relatively small parcels of privately owned property is essentially adjudicatory in nature, and thus cannot be enacted by initiative.

[1a] As we shall explain, California precedent has settled the principle that zoning ordinances, whatever the size of parcel affected, are legislative acts. We find no warrant for departing from that principle. A decision that some zoning ordinances, depending on the size and number of parcels affected and perhaps on other factors, are adjudicative acts would unsettle well established rules which govern the enactment of land use restrictions, creating confusion which would require years of litigation to resolve. Since such a decision is unnecessary to protect either the rights of the landowners or the public interest in orderly community planning and development, we adhere to established precedent and conclude, accordingly, that the ordinance rezoning plaintiffs' property was a legislative act.

Our opinion therefore holds that the Court of Appeal erred in holding the initiative ordinance invalid on the ground that it is adjudicative in nature. Plaintiffs raised numerous other objections to the initiative, however, which were not resolved by the Court of Appeal and not fully argued before this court. Accordingly our order retransfers this cause to the Court of Appeal for resolution of those issues. [28 Cal.3d 515]

We turn now to a more detailed statement of the factual background of this litigation. The initiative in question seeks to rezone three contiguous undeveloped properties located in the City of Costa Mesa [fn. 4](#) -- the Arnel property (50 acres), the South Coast Plaza property (13 acres), and the Roberts property (4.6 acres). Under the city's general plan, as amended in 1976, 8.5 acres of the Arnel property was designated as low density residential; the balance of the approximately 68 acres affected by the initiative was designated medium density residential. In November of 1976 the city approved a specific plan for development of the Arnel property, and pursuant to that plan, rezoned the property PDR-LD (planned development residential-low density) and PDR-MD (planned development residential-medium density). The South Coast Plaza and Roberts properties retained A-1 (general agricultural) zoning.

On July 18, 1977, the city approved development of the Arnel property and a tentative tract map. In its final form, the Arnel project was to consist of 127 single-family residences on approximately 23 acres and 539 apartment units on a similar acreage. Projected apartment rentals indicated that the project was intended primarily for moderate income housing.

Shortly after the city's approval of the Arnel development, the North Costa Mesa Homeowner's Association circulated an initiative petition to rezone the Arnel, South Coast Plaza, and Roberts properties to R-1 (single-family residential) zoning. At the municipal election of March 7, 1978, the voters adopted the initiative by a narrow majority. [fn. 5](#)

The city thereafter refused to process the final tract map or applications for building permits for the Arnel project. Arnel filed suit for mandate, injunctive relief, and declaratory relief. On the same day, [28 Cal.3d 516] South Coast Plaza filed a separate action for declaratory relief.

Pursuant to stipulation the actions were consolidated for trial.

The trial court rejected the numerous contentions raised by the plaintiffs and rendered judgment upholding the validity of the initiative. The Court of Appeal reversed, holding that the rezoning of specific, relatively small parcels of private property is an act adjudicatory in nature, and therefore cannot be accomplished by initiative. [fn. 6](#) We transferred the cause to this court for further consideration of that issue.

Numerous California cases have settled that the enactment of a measure which zones or rezones property is a legislative act. \*\*\*The cases draw no distinctions based on the size of the area or the number of owners. Some of the cases involved measures which rezoned a substantial part of the city (e.g., San Diego Bldg. Contractors Assn. v. City Council, supra, [13 Cal.3d 205](#)); some rezoned areas roughly comparable to the 68 acres at issue here (e.g., Lockard v. City of Los Angeles, supra, [33 Cal.2d 453](#)); many involved parcels much smaller than 68 acres (Dwyer v. City Council, supra, 200 Cal. 505 (proposed site for poultry farm owned by University of California, said to constitute one five-hundred-fiftieth of the City of Berkeley); Toso v. City of [28 Cal.3d 517] \*\*\*)

Thus whatever the legal controversy and whatever the size or ownership of the land involved, every California decision on point (and there are many more than the few cited in this paragraph) has held that the enactment or amendment of a zoning ordinance is a legislative act. Of the various cases cited, Dwyer v. City Council, supra, 200 Cal. 505, is the closest on point. The City of Berkeley rezoned a single small parcel owned by the University of California to permit operation of an experimental poultry farm. Plaintiffs petitioned for a referendum, and sought mandate to compel the city to submit the measure to the voters. Defendants argued that the referendum was improper because the measure rezoned only a small area and affected only persons living in the vicinity of the lot -- essentially the same argument presented by the plaintiffs in the present case. Rejecting that argument, the court stated that "If the comprehensive zoning law districting all portions of the city were before us, it could not be successfully contended that the ordinance would not be subject to the referendum. ... A zoning ordinance as amended becomes in effect a different ordinance. Even if it be granted that a reclassification of an area as small as that involved in the instant case cannot be said to effect a new scheme, the same rule must necessarily be followed as would be applied if a larger area had been reclassified, and it may be observed that a piecemeal rezoning of small areas may result in a plan differing in vital particulars from that originally contemplated. In view of the substantial interest which the electors of the entire municipality have in its zoning scheme, it cannot be held that because residents of the particular locality rezoned may be more immediately and apparently affected than are residents of other portions of the city, the broad initiative and referendum provisions of the charter and constitution do not apply to an amendment of the general zoning law which reclassifies a portion of the city's territory." (200 Cal. at pp. 514-515.)

\*\*\*

From the doctrine that zoning ordinances are legislative, but variances and similar administrative decisions are adjudicative, [fn. 11](#) derive a number of rules which facilitate the making of land use decisions and simplify litigation challenging those decisions. Among those rules are: (1) Zoning ordinances, but not administrative decisions, can be enacted by initiative (Associated Home

Builders etc., Inc. v. City of Livermore, supra, [18 Cal.3d 582](#)). (2) Zoning ordinances, but not administrative decisions, are subject to referendum (Dwyer v. City Council, supra, 200 Cal. 505). (3) A zoning ordinance is reviewable by ordinary mandamus (Code Civ. Proc., § 1084); an administrative decision, by administrative mandamus (Code Civ. Proc., § 1094.5). (4) A zoning ordinance, unlike an administrative decision, does not require explicit findings (Ensign Bickford Realty Corp. v. City Council, supra, [68 Cal.App.3d 467](#), 473). (5) A zoning ordinance is valid if it is reasonably related to the public welfare (see Miller v. Board of Public Works (1925) 195 Cal. 477, 488 [234 P. 381, 38 A.L.R. 1479]; administrative decisions must implement established standards and rest upon findings supported by substantial evidence. (Code Civ. Proc., § 1094.5.) Under the views advanced by plaintiffs, however, the application of these rules is uncertain until a reviewing court finds whether the decision is legislative or an adjudicative act. Plaintiffs propose, however, no test to distinguish legislative and adjudicative actions with reasonable certainty.

The factual setting of the present case illustrates the problems courts will face if we abandoned past precedent and attempted to devise a new **[28 Cal.3d 523]** test distinguishing legislative and adjudicative decisions. The Court of Appeal, for example, found here that the instant initiative was an adjudicative act because it rezoned a "relatively small" parcel of land. It is not, however, self-evident that 68 acres is a "relatively small" parcel; some cities have entire zoning classifications which comprise less than 68 acres. The size of the parcel, moreover, has very little relationship to the theoretical basis of the Court of Appeal holding -- the distinction between the making of land-use policy, a legislative act, and the asserted adjudicatory act of applying established policy. The rezoning of a "relatively small" parcel, especially when done by initiative, may well signify a fundamental change in city land-use policy.

Plaintiffs alternatively urge that the present initiative is adjudicatory because it assertedly affects only three landowners. But this is a very myopic view of the matter; the proposed construction of housing for thousands of people affects the prospective tenants, the housing market, the residents living nearby, and the future character of the community. The number of landowners whose property is actually rezoned is as unsuitable a test as the size of the property rezoned. Yet without some test which distinguishes legislative from adjudicative acts with clarity and reasonable certainty, municipal governments and voters will lack adequate guidance in enacting and evaluating land-use decisions.

In summary, past California land-use cases have established generic classifications, viewing zoning ordinances as legislative and other decisions, such as variances and subdivision map approvals, as adjudicative. This method of classifying land-use decisions enjoys the obvious advantage of economy; the municipality, the proponents of a proposed measure, and the opponents of the measure can readily determine if notice, hearings, and findings are required, what form of judicial review is appropriate, and whether the measure can be enacted by initiative or overturned by referendum.

To depart from past precedent and embark upon a case by case determination, on the other hand, would incur substantial administrative cost. Such a rule would expose the municipality to the uncertainty of whether a proposed measure would be held to be legislative or adjudicative: it would entail cost to the litigants, and it would burden the courts with the resolution of these issues.

Plaintiffs argue, however, that the administrative cost which would be entailed by departure from precedent in this case is justified to protect **[28 Cal.3d 524]** the rights of landowners. We believe, however, that those rights are adequately protected under existing law. As we noted

earlier, landowners retain constitutional protection against zoning which is arbitrary, unreasonable, or deprives them of substantially all use of their land. (See ante, at p. 521.) When zoning is enacted by the city council, land owners by statute are entitled to notice and hearing. (Gov. Code, § 65856.) When zoning is enacted by initiative, landowners have the same opportunity as their opponents to present their case to the electorate. (See Oran, *The Initiative and Referendum's Use in Zoning* (1976) 64 Cal.L.Rev. 74, 93.)

\*\*\*

Neither do we believe departure from settled precedent is necessary to protect the public interest in rational and orderly land-use planning. Zoning changes must conform to the city's general plan (see Gov. Code, § 65860), which must in turn conform to requirements established by state statute. Zoning changes must also meet the criteria established in *Associated Home Builders etc., Inc. v. City of Livermore*, supra, [18 Cal.3d 582](#), which require such legislation to reasonably relate to the welfare of the region affected. (See 18 Cal.3d at pp. 609-610.) The spectre of a few voters imposing their selfish interests upon an objecting city and region has no basis in reality. In conclusion, the current California rule that rezoning is a legislative act is well settled by precedent and comports with both federal and state constitutional requirements. The cost of departing from settled precedent in this setting is apparent; the benefits questionable and perhaps **[28 Cal.3d 525]** nonexistent. We therefore adhere to the rule that a zoning ordinance is a legislative act and, as such, may be enacted by initiative.